



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL
PROPERTY)**

Case reference : CHI/00HE/LAM/2019/0011

Property : 10 & 10A Victoria Place, Penzance, TR18 4DD

Applicant : Stefan and Sheila Piasecki

Representative :

Respondent : Malcolm Paul Darwen

Representative :

Type of application : Appointment of Manager Section 24 of the
Landlord and Tenant Act 1987 (1987 Act)

Tribunal member(s) : Judge Tildesley OBE
Mr R Brown FRICS

Venue : 30 August 2019
Truro Magistrates' Court

Date of decision : 2 September 2019

DECISION

The Application

1. The Applicants seek a determination pursuant to s.24A of the Landlord and Tenant Act 1987 for the appointment of a manager of the property known as 10 & 10A Victoria Place, Penzance TR18 4DD. The proposed manager is Anthony Richards MRICS of 11 Market Place, Penzance, Cornwall TR18 2JA.
2. Mr Stefan Piasecki and Mrs Sheila Piasecki are the leasehold owners of Flat 10A Victoria Place Penzance TR18 4DD. The title of which is registered under title number CL210948. They have a lease of 999 years made between Malcom Joseph Ridgeway of the one part and Nicholas Martin Cook of the other part dated 3 October 2003.
3. Mr Malcom Paul Darwen owns the freehold of the property under title number CL210950, and the leasehold of 10 Victoria Place under title number CL199563. He has a lease of 999 years made between Malcom Joseph Ridgeway of the one part and Victoria Allan of the other part dated 16 July 2004.
4. The property is a Grade II Listed Georgian Townhouse believed to date from around 1829. The property was converted around 2002 into two flats with separate entrances. Flat 10A is a two bedroom flat occupying the ground and lower ground floors. Flat 10 is a one bedroom flat occupying the first floor.
5. The Applicants served a notice under section 22 of the 1987 Act dated 13 March 2019 which gave a period of 30 days for remedying the matters identified in the notice.
6. The Respondent agreed to the making of an Order under section 24 of the 1987, and to the appointment of Mr Richards as Manager.
7. The purpose of the hearing on 30 August 2019 was for the Tribunal to determine the suitability of Mr Richards for the appointment, and if yes to decide on the terms of the Order.
8. The Applicants attended the hearing in person. The Respondent was also in attendance accompanied by his partner, Ms Delagh King.
9. Mr Anthony Richards gave evidence on his experience and suitability of appointment.

Reasons

10. Mr Richards qualified as a Chartered Surveyor in 1994 and is a Member of the Royal Institution of Chartered Surveyors (RICS). Mr Richards has been managing blocks of flats since the creation of his firm, Anthony Richards Property Services, which he set up with his wife in 2001. The firm currently manages around 35 blocks of flats all located in West Cornwall. Mr Richards confirmed that he had managed listed buildings. Mr Richards pointed out that his Office was such a building.
11. Mr Richards stated that he had read and understood the duties of a manager appointed by a Tribunal under section 24 of the 1987 Act, and that he was familiar with the contents of the 3rd edition of the Service Charge Residential Management Code published by RICS. Mr Richards acknowledged that he had no experience of a section 24 appointment. Mr Richards said that both parties had independently approached him to manage the property. Mr Richards indicated that he would only accept the engagement if he was appointed by the Tribunal so that he could act independently of the parties.
12. Mr Richards stated that he had viewed the building from the outside, and was aware of the current proposals to repair the render to the property. If he was appointed, he would ensure that the building was kept both safe and legal.
13. Mr Richards said that his fee would be £1,000 per annum plus VAT, and an additional fee of 10 per cent of contract price plus VAT for major works over and above routine maintenance.
14. Mr Richards confirmed that his firm held full professional indemnity insurance offering cover of £0.5 million, and public liability insurance. Mr Richards said that the service charges monies would be held in a general client bank account with full client protection cover arranged through RICS.
15. Mr Richards suggested that the term of the Order should be 12 months. Mr Richards indicated that he would be willing to accept the appointment if offered.

Decision

16. The Tribunal finds that Mr Richards is suitable to be appointed as Manager of the property.

17. The appointment is for two years. The Tribunal considered that Mr Richards may require more than 12 months to complete the repairs to the render of the property. A party may apply to discharge the Order early or to extend it.
18. The appointment is subject to Mr Richards producing a copy of the professional indemnity insurance with an endorsement that it covers his duties as a Tribunal appointed manager together with confirmation that services charge monies are held in a specific client account for the property, and that the monies are covered by full client protection. Mr Richards to provide the necessary documentation and confirmed by no later than **16 September 2019**.
19. The appointment is subject to the terms of the Order below. The Order contains powers over and above those set out in the leases in order to secure the objectives of the Order. Mr Richards is given seven days in which to ask questions on the terms.

MANAGEMENT ORDER

INTERPRETATION

IN THIS ORDER

“**The Property**” means the flats and other premises known as 10 and 10A Victoria Place Penzance TR18 4DD as registered at the Land Registry under the leasehold and freehold titles numbered CL210948, CL199563 and CL210950.

“**The Landlord**” shall mean Mr Malcom Paul Darwen , or his successor in title to the reversion immediately expectant upon the Leases.

“**The Tenants**” shall mean the proprietors for the time being of the Leases whether as lessee or under-lessee and "Tenant" shall be construed accordingly.

“**The Leases**” shall mean the leases in the Property: 999 years made between Malcom Joseph Ridgeway of the one part and Nicholas Martin Cook of the other part dated 3 October 2003, and 999 years made between Malcom Joseph Ridgeway of the one part and Victoria Allan of the other part dated 16 July 2004 under title numbers CL210948 and CL199563.

“**The Manager**” means Mr Anthony Richards MRICS FAAV of 10 Market Place, Penzance TR18 2JA.

“**The Functions**” means any functions in connection with the management of the Property including any obligations and powers of the landlord under the Leases.

It IS ORDERED that

1. In accordance with section 24(1) Landlord and Tenant Act 1987, Mr Anthony Richards MRICS FAAV of 10 Market Place, Penzance TR18 2JA is appointed as manager of the Property.
2. The Order shall continue for a period of two years from 16 September 2019. If any party or parties interested wish to apply for an extension of the Order they are encouraged to do so at least three months before the Order expires.
3. The Manager shall manage the Property in accordance with
 - a. the directions and schedule of functions and services attached to this Order;

- b. save where modified by this Order, the respective obligations of the Landlord and the Lease whereby the Property is demised by the Landlord and in particular with regard to repair, decoration, provision of services and insurance of the Property; and
 - c. the duties of a manager set out in the Service Charge Residential Management Code (“the Code”) (3rd Edition) or such other replacement code published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to section 87 Leasehold Reform Housing and Urban Development act 1993.
4. The Manager shall register the Order against the Landlord’s registered title as a restriction under the Land Registration Act 2002 or any subsequent Act.

DIRECTIONS

5. From the date this Order comes into effect, no other party shall be entitled to exercise a management function in respect of the Property where the same is the responsibility of the Manager under this Order.
6. Where there is a conflict between the provisions of the Management Order and the lease, the provisions of the Management Order take precedence.
7. That the Landlord shall give all reasonable assistance and co-operation to the Manager in pursuance of his functions, rights, duties and powers under this Order, and shall not interfere or attempt to interfere with the exercise of any of their said rights, duties or powers by due process of law. For the avoidance of doubt this shall not prevent the Landlord from bringing legal proceedings (or any other due process of law) should the Manager act unlawfully and/or negligently and/or contrary to the powers and duties set out in this Order.
8. That the Landlord allows the Manager and his employees and agents access to all parts of the Property in order that the Manager might conveniently perform his functions and duties and exercise his powers under this Management Order.
9. The Manager shall act fairly and impartially in his dealings in respect of the Property.
10. The Manager shall in the performance of his functions under this Order exercise the reasonable skill, care and diligence to be expected of a manager experienced in carrying out work of a similar scope and complexity to that required for the performance of the said functions.

11. From the date of the appointment and throughout the appointment the Manager shall ensure that he has appropriate professional indemnity cover in the sum of at least £0.5 million and shall provide copies of the certificate of liability insurance to the Tribunal prior to the 16 September 2019 and upon request being made by any Tenant of all or part of the Property, and the Landlord. The Certificate should specifically state that it applies to Mr Richard's duties as a Tribunal appointed manager.
12. That no later than two weeks after the date of this Order the Landlord shall provide all necessary information to and arrange with the Manager an orderly transfer of responsibilities. No later than this date, the Landlord shall transfer to the Manager all the accounts, books, records and funds relating to the Service Charge and Insurance of the Property.
13. The rights and liabilities of the Landlord arising under any contracts of insurance, and/or any contract for the provision of any services to the Property shall upon the date of the appointment become rights and liabilities of the Manager subject to the right of the Manager to decide in his absolute discretion which of any contracts he will assume the rights and liabilities such decision shall be communicated in writing to the relevant parties within 56 days from the date this order.
14. The Manager shall be entitled to remuneration, which for the avoidance of doubt shall be recoverable as part of the service charges of leases of the property in accordance with the Schedule of Functions and Services attached.
15. By no later than six months from the date of appointment the Manager shall prepare and submit a brief written report for the Tribunal on the progress of the management of the Property up to that date providing a copy to the Tenants of the Property and the Landlord at the same time.
16. Within 56 days of the conclusion of the Management Order the Manager shall prepare and submit a brief written report for the Tribunal on the progress and outcome of the management of the Property up to that date, to include final closing accounts. The Manager shall also serve copies of the reports and accounts on the Landlord and Tenants who may raise queries on them within 14 days. The Manager shall answer such queries within a further 14 days. Thereafter the Manager shall reimburse any unexpended monies to the paying parties, or, if it be the case any new Tribunal appointed manager or, in the case of dispute, as decided by the Tribunal upon application by any interested party.

17. The Manager may apply to the First-Tier Tribunal for further directions, in accordance with section 24(4), Landlord and Tenant Act 1987. Such directions may include, but are not limited to:
- a. Any failure by any party to comply with an obligation imposed by this Order;
 - b. For directions generally;
 - c. Directions in the event that there are insufficient sums held by him to discharge his obligations under this Order and/or to pay his remuneration.

SCHEDULE OF FUNCTIONS AND SERVICES

Insurance

1. Maintain appropriate building insurance for the Property.
2. Ensure that the Manager's interest is noted on the insurance policy.

Service charge

3. Prepare an annual service charge budget, and make provision for interim payment in advance, and a balancing payment by, or credit made to, the Tenants at the end of the year as appropriate.
4. Administer the service charge and prepare and distribute appropriate service charge accounts to the Tenants.
5. Demand and collect service charges and insurance due from the tenants under the leases.
6. The Manager shall have the authority to demand payments in advance and balancing payments at the end of the accounting year including payment in advance for the major works prior to contract, to establish a sinking fund to meet the Landlord's obligations under the lease, to allocate credits of service charge due to Tenants at the end of the accounting year to the sinking fund, and to collect arrears of service charge and insurance that have accrued before his appointment.
7. The Manager will finalise his first estimate of the service charge for the year from 16 September 2019 to 15 September 2020 (accounting year) within 30 days of the date of the commencement of the Management order, and send it with the demand for payment on account. Thereafter for subsequent accounting years the estimated budget and demand will be issued 30 days prior to the commencement of the relevant service charge year.
8. The service charge shall be payable in advance within 30 days of the demand.
9. The contributions payable by the Tenants to the service charge shall be 50 per cent.
10. The Manager is entitled to recover through the service charge the costs of his fees and of any surveyors, architects, solicitors, counsels and other professional persons or firms fees incurred by him whilst carrying out his functions under the Order.
11. Place, supervise and administer contracts and check demands for payments of goods services and equipment supplied for the benefit of the Property with the service charge budget.

Administration Charges

12. The Manager may recover administration charges from individual Tenants for his costs incurred in collecting service charges and insurance which includes the costs of reminder letters,

transfer of files to solicitors and letters before action. The Manager should publish the costs of his charges for debt recovery and the timetable allowed for each course of action. Such charges will be subject to legal requirements as set out in schedule 11 of the Commonhold and Leasehold Reform Act 2002.

Accounts

13. Prepare and submit to the Landlord and the tenants an annual statement of account detailing all monies receivable, received and expended. The accounts to be certified by the external auditor, if required by the Manager.
14. Maintain efficient records and books of account, which are open to inspection by the Landlord and the Tenants. Upon request, produce for inspection, receipts or other evidence of expenditure.
15. Maintain on trust an interest bearing client account in the name of the property at such bank or building society, as the Manager shall from time to time decide, into which service charge contributions, Insurance Rent and all other monies arising under the leases shall be paid.
16. All monies collected will be accounted for in accordance with the Code 3rd edition.

Repair and Maintenance

17. Deal with routine repair and maintenance issues and instruct contractors to attend and rectify problems. Deal with all building maintenance relating to the services and structure of the Property which includes compliance with all regulatory and statutory requirements and in the interests of good estate management.
18. The setting up and implementation of a planned maintenance programme for the next five years by 1 December 2019 to allow for the periodic redecoration and repair of the property.
19. In addition to undertaking and arranging day-to-day maintenance and repairs, to arrange and supervise major works which are required to be carried out to the Property including preparing a specification of works and obtaining competitive tenders.
20. To liaise with the relevant statutory bodies responsible for buildings.
21. To ensure that the Landlord, and the Tenants are consulted on any proposed works to the Property and to give proper regard to their views. Copies of programmes of planned and major works should be sent to the Landlord, and Tenants.

Right to Bring Legal Proceedings

22. The Manager shall be entitled to bring proceedings in any court or tribunal in respect of any causes of action (whether contractual or tortious) accruing before or after the date of his appointment.
23. Such entitlement shall include but shall not be limited to bringing

- proceedings in respect of any arrears of service charge attributable to any of the Flats in the property and for which these proceedings shall include any application under Part 7 or Part 8 of the Civil Procedure Rules for judgment in the County Court or High Court including a Charging Order or any application made to the First-tier Tribunal under section 27A of the Landlord and Tenant Act 1985 or section 168(4) and schedule 11 of the Commonhold and Leasehold Reform Act 2002 and shall further include any appeal against any decision made in any such proceedings.
24. The Manager shall be entitled to be reimbursed from the service charge account any costs, disbursements or VAT for taking proceedings including any fees payable to solicitors, accountant, counsel or expert on a full indemnity basis. If any of those costs are recovered direct from the defaulting Tenant or Landlord those costs should be refunded to the service charge account.
 25. The Manager has the right to instruct solicitors and counsel and other professionals for the taking of legal proceedings.

Fees

26. The Manager's fee for the above-mentioned management services will be a basic fee of £1,000 plus VAT per annum. The basic fee will include those services for the Annual Fee at paragraph 3.4 of the Code
27. The Manager is entitled to an additional fee of 10 per cent plus VAT of the contract price for major works.

Complaints procedure

28. The Manager shall operate a complaints procedure in accordance with or substantially similar to the requirements of the Royal Institution of Chartered Surveyors.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.